

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**DONG VAN TRAN**

Claimant

VS.

**CUSTOM CUPBOARDS**

Respondent

AND

**INDUSTRIAL INDEMNITY CO.**

Insurance Carrier

Docket No. **259,413**

**ORDER**

Respondent requests review of a preliminary order entered by Administrative Law Judge Nelsonna Potts Barnes on November 28, 2000.

**ISSUE**

Whether claimant sustained a personal injury by accident arising out of and in the course of his employment.

**FINDINGS OF FACT & CONCLUSIONS OF LAW**

The claimant testified that he began experiencing pain in his back a couple of days prior to reporting the problem to his immediate supervisor. The claimant, through an interpreter, explained that his back began hurting while he was at work and that his job duties consisted of a variety of tasks including pushing and pulling a cart and using a high powered staple gun. The claimant could not identify a specific incident that made his back hurt but he noted that several of his job tasks caused back pain.

When the claimant reported to work on the 8th of September, he was given an employee warning notice regarding unexcused absences. Two hours later, the claimant notified his supervisor of problems with his back. The respondent's human resource manager referred the claimant to a physician. The claimant went to the physician

designated by the respondent, however, because of language difficulties, the doctor advised the claimant to come back with an interpreter the following Monday.

The claimant apparently had difficulty finding an interpreter and did not keep the appointment on Monday, but a week later did return to the doctor with an interpreter. At that time, the receptionist advised the claimant that the doctor would not see him. The claimant then obtained his own treatment with a Vietnamese doctor.

The respondent's human resource manager testified: that the claimant had not worked on the 5th of September; that he had worked on the 6th of September but had left early; that he did not work on the 7th of September; and, that he was only at work for a few hours on the 8th of September when he reported the injury. She further testified that claimant's wife called the respondent on the 11th, 12th, and 13th of September, stating the claimant would be unable to work. The claimant did not call in on the 14th of September and when he showed up on the 15th of September to get his paycheck he was terminated because of the respondent's policy on unexcused absences.

It was controverted whether the claimant was required to use a staple gun in the performance of his job duties. The human resource manager further testified that she had never had difficulty communicating with the claimant.

The respondent contends that the various inconsistencies as to a specific incident that caused the back injury, the work history immediately preceding the report of injury, the fact claimant received a warning about unexcused absences on the date the injury was reported and the claimant's failure to show up for the medical treatment, all combine to indicate that the injury was a fabricated incident. The respondent further notes that the claimant never had to use an interpreter at work and infers the present inability to communicate is suspicious.

The claimant specifically testified that he did a number of job duties none of which he could specifically identify as causing his back injury and that all of the duties caused his back to start hurting. The claimant further testified that he did not report the back problem earlier because the pain at first wasn't that bad, that he did not want an injury on his record and he needed the job. It was language difficulties that interfered with the claimant's effort to get treatment as directed by the respondent. While there is no question that the claimant is able to speak and understand some English, nonetheless, it is equally clear that there were difficulties communicating with the doctor. At the preliminary hearing the Administrative Law Judge commented on the communication problems that were evident even with the assistance of an interpreter.

The Board finds where there is conflicting testimony contained in the record, it is significant that the Administrative Law Judge had the opportunity to judge the credibility of the witnesses. Finding that the claimant was entitled to medical compensation, the Administrative Law Judge had to believe the claimant's testimony. The Board finds as it

has in the past, that some deference should be given to the Administrative Law Judge's conclusions because she had the opportunity to assess the witnesses' credibility. Therefore, the Board concludes the Administrative Law Judge's preliminary hearing order should be affirmed.

**WHEREFORE**, it is the finding, decision and order of the Board that the Order of Administrative Law Judge Nelsonna Potts Barnes dated November 28, 2000, is affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of February 2001.

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BOARD MEMBER

**Copies to:**

Phillip B. Slape, 1009 S. Broadway, Wichita, KS 67211  
Christopher J. McCurdy, 301 N. Main, Suite 1900, Wichita, KS 67202  
Nelsonna Potts Barnes, Administrative Law Judge  
Philip S. Harness, Workers Compensation Director